
Health Occupations Credentialing



Frequently Asked Questions - Criminal Record Checks KSA 39-970 and KSA 65-5117 - UPDATED 07/01/03

1. What is a “criminal record check” and why is it a law?

The criminal record check is a review of the information on file with the Kansas Bureau of Investigation (KBI). The KBI collects information from police arrest reports, prosecution data, court determinations, and Department of Corrections. Much of this information is stored in an electronic form by the KBI, but some is on paper. The law was established to prevent persons with serious criminal histories from working in adult care homes and home health agencies. The basic premise is that people who have serious criminal histories, especially crimes against persons, should not be responsible for the care of the frail or elderly citizens of Kansas. The legislature made it a law as a part of the protection of the health and safety of residents and consumers of services in adult care homes and home health agencies.

2. What kind of information is sent in and who sends it to the KBI?

The KBI has certain standard identifying information that is then compared to information on record. For example, a name (first, middle, last, suffix), date of birth, sex, race, addresses, social security number all are important in order to distinguish people. The law requires the person who operates the adult care home or home health agency to ask KDHE to compare the identifying information of a person that the operator is considering for employment or has employed to the information available from the KBI criminal history records. So, the operator sends the request to KDHE, then KDHE sends the request to KBI. KDHE staff then access the results of the inquiry electronically. If there is a “match,” KDHE sends the portions of the criminal history record information which are allowed to be released under the law to the requesting adult care home or home health agency. The law is specific about what crimes result in a person being prohibited from employment; if the record shows a conviction of a crime that is prohibited under the law, a notice is sent to the operator of the facility or home health agency indicating that the person is prohibited from working.

3. How quickly can we expect a response?

That is unknown due to factors beyond anyone's control. Each person has a different record, and depending on the ability to provide KBI with accurate identifying data, running a name check can occur within days or months. Their data is cumulated by reporting across the state from court documents; thus, the accuracy of data contributed is as critical as the accuracy of data against which it is checked. A determination is made according to interpretation of the law to determine the existence of a conviction for a prohibited offense; notice of employment prohibition is then provided to the operator who submitted the request.

The criminal history information for all adult convictions and convictions for K.S.A.

21-3437 and 21-3517 is provided to the operator. Effective July 1, 2003, juvenile criminal history information related to convictions under K.S.A. 21-3701 is also provided. All other juvenile criminal history is not provided.

The law addresses a provisional employment under subsection (d) ". . . a person who operates an adult care home may hire an applicant for employment on a conditional basis pending the results from the department of health and environment."

4. What do we do if we get notice that someone has a prohibition, and they are already employed?

Compliance with the law indicates that " no person shall knowingly operate an adult care home if, in the adult care home, there works any person who . . . "

The law provides for civil liability protections under subsection (d) . . . "no adult care home, the operator or employees of an adult care home or an employment agency, or the operator or employees of an employment agency, shall be liable for civil damages resulting from any decision to employ, refuse to employ, or to discharge from employment any person based on such adult care home's compliance with the provisions of this section if . . . [acting] in good faith to comply with this section."

5. How will KDHE enforce this?

Enforcement will follow regular survey protocols. This means that the operator must have a procedure in place to request criminal record checks of KDHE. If a notice of prohibition is generated based upon a criminal conviction which would prohibit employment, the administrator of the requesting facility/agency will be sent the original Notice of Employment Prohibition. In addition, HOC will provide monthly lists of prohibited individuals to Department on Aging survey and certification operations personnel.

6. Can't KDHE just bill us for this service or can't we just pay quarterly?

NO. The legislation did not provide for this type of service. However, alternatives will be considered. Any proposed alternative must demonstrate neutral cost to the state or cost savings. One alternative which has been implemented is the prepaid form. Prepaid forms may be purchased in multiples of 10. No further payment is required when these forms are sent in. Further information can be obtained on the HOC website www.kdhe.state.ks.us/hoc or by calling (785) 296-0446.

7. How was the fee determined?

The legislation authorizes KDHE to collect a fee equal to cost. The fee is what it costs KDHE to establish the program including reimbursement to the KBI. Certain specific interpretations had to be negotiated to keep the costs down for the industry; for example, the law addresses KBI being reimbursed for "names," not "persons." By agreeing to accept payment per "person" KBI has kept costs down.

8. How much of that goes to KBI?

KBI has agreed to complete the record checks on each person for \$3.75. This will be revisited as appropriate.

9. If we are currently using a service or KBI directly do we have to switch to KDHE?

YES. The operator is responsible for not employing anyone who has history of prohibited

offenses. The law specifies that KDHE accesses criminal history information through KBI records. Under these laws, certain juvenile convictions would constitute a prohibition of employment, which is one reason for the requirement for accessing information from KBI through KDHE since these laws allow KDHE access to juvenile records. Most other sources, including KBI, which you as an operator may access, would not allow access to juvenile records.

10. Can criminal record information obtained from a private contractor be substituted?

NO. The statute requirement is specific and cites KDHE as the conduit for the information. There is no reference to allow the use of criminal record information from a private contractor.

11. If a prospective employee fills out the form, does that automatically allow for consent?

This is the responsibility of the requester. You should seek your own legal counsel.

12. When will there be regulations?

The statute provides adequate directives to implement the program. Regulations will be written as appropriate.

13. What is the legality of asking these questions or requiring this information?

A statute requires it, making it legal. Statutes are presumed to be constitutional until successfully challenged in the courts.

14. What right does a prospective employee have regarding this information (what is submitted, or what comes back)?

The law states in subsection (5) that, "An operator who receives criminal history record information under this subsection (f) shall keep such information confidential, except that the operator may disclose such information to the person who is the subject of the request for information."

15. What responsibility do I have for the information KDHE provides me if I don't hire someone based on KDHE criminal conviction data?

The information from a Notice of Employment Prohibition may be shared with any other employer who may request that information. However, generally this information should remain confidential.

16. Do I have to maintain a file for this information?

KDHE does not require you to maintain a file of this information, however, any documentation of compliance may prove useful during the survey process. Further, the law requires that the information shall be kept confidential and provides for monetary penalties for violating these confidentiality requirements. You should seek legal counsel for general file maintenance advice.

17. What kind of security do I have to maintain for a file containing criminal information, for those I hire and those I don't hire?

Effective July 1, 2003, in addition to the current criminal history provided, KDHE is required to provide the operator with the juvenile criminal history information concerning convictions under K.S.A 21-3701. The law requires that this information be kept confidential and provides for monetary penalties for violating these confidentiality requirements. The criminal history information may be disclosed to the individual who is the subject of the request. Seek legal counsel for specific security requirements concerning criminal record check request information.

18. How do we get all aliases?

Obviously, you cannot ever be sure that any information you receive is complete and accurate. You must make reasonable efforts to get complete information. The goal should be to try and obtain any names the individual may have ever used.

19. What about the "Consumer Directed Services Program" of the state? When a client chooses to use a friend or relative as their caretaker and the person in charge of the hiring decision insists on an individual even though the individual has a record?

This program refers to certain in-home health care services which may be coordinated or reimbursed by state or federal health care funds. Persons providing in-home services are contracted by the homebound person to provide care to that person. The home health agency does not procure or select which provider serves a client under the Consumer Directed Services Program. The caretaker is employed by the individual and is not an employee of a home health agency. The law requiring criminal record checks for applicants or employees of an adult care home or home health agency currently has no provisions requiring record checks on individuals hired through the Consumer Directed Services Program.

20. How do operators handle agency staff?

Both laws address this under subsection (d), “. . . any employment agency which provides employees to work in the adult care home [or home health agency] [must provide] written certification that such employees are not prohibited from working the adult care home under this act.” The department is receiving and will process requests from employment agencies. The requestor will be notified of any matches of prohibited offenses.

21. What about convictions in other states or federal crimes?

The law states, under subsection (d), “. . . for the purpose of complying with this section, information relating to convictions and adjudications by the federal government or to convictions and adjudications in states other than Kansas . . . until the secretary determines [that] . . . such information could reasonably be . . . obtained within a two-week period.”

The law is constructed such that it is the operator's responsibility to not employ anyone with a prohibited conviction. Therefore, if an operator has evidence or can obtain evidence that the person would be prohibited, it is his or her responsibility to comply with the conditions set forth in law. This includes any sources outside the jurisdiction of KDHE and the KBI.

22. Are (licensed adult care home) administrators exempt?

YES. However, there are other laws which require record checks under the licensing board's policies.

23. If an employee's name is sent in for record check, and the employee maintains employment, do they have to be checked again?

It is the responsibility of the operator to comply with the conditions of the law. The frequency of rechecks is up to the operator. KDHE will provide the service as indicated by law. KDHE maintains a record of the date of request on names previously submitted and any results. This information is integrated into the Health Occupations Credentialing Registry and is available on certified staff upon contact to the Kansas Nurse Aide Registry.

24. If we fire someone because of the record check, does that count against the facility for unemployment insurance purposes?

This question should be brought to the Department of Human Resources.

25. What does a facility do if several employees come back with prohibitions . . . how can we continue to provide services if we have to immediately fire several employees?

The law is specific concerning the operator's responsibilities. To knowingly continue to employ a person with a prohibited offense after a record check would be in violation of the law.

26. Does this apply to long-term care units in hospitals?

NO. The law applies to any licensed adult care home (or home health agency) in Kansas. It does not apply to licensed hospitals.

27. What about residential care or assisted living facilities which are not required to have an administrator?

If the facility is licensed under the Kansas Adult Care Home Act then the criminal record check law applies. It is the operator's responsibility to request record checks. An "operator" of a residential care or an assisted living facility is checked upon request for licensing of the facility. This occurs under separate statutory requirements.

28. Since this information is placed on the Kansas Nurse Aide Registry, do we have to check only through the registry?

NO. The information received from record checks is integrated into the Kansas Nurse Aide Registry (KNAR) database. They are not the same, however. Criminal record checks will only be received in writing and must be accompanied by payment of the associated fees. The date of the individual's most recent criminal record check and whether they are prohibited from employment due to a conviction for a prohibited offense is made available to callers of the KNAR. A criminal record check is not required if an individual has had one done in the past year.

29. The statute refers to "anyone who works" in an adult care home . . . what about the person who mows the lawn, or a contractor who does plumbing or painting, does the law apply to them?

This is interpreted to mean anyone who regularly works, not including an incidental or emergency repair person or episodic contract labor. If there is any doubt as to whether a person is covered by the law, a record check should be conducted.

30. Under the exemption for volunteers, does that include persons who are doing community service for a diversion or criminal conviction?

It is the position of the department that any operator who allows community service for a diversion or criminal conviction should carefully analyze the benefit or risk to the residents or client. The operator should be provided with adequate information from the person's court representative that would demonstrate that the person would not be subject to prohibition under the law if employed. Again, this is an administrative judgment on the part of the operator.

31. What if you have an employee who has been employed more than five years, has a prohibited conviction and you know it; what do you do?

The law exempts persons employed in the same facility/agency for five consecutive years prior to July 1, 1997 (employed on or before June 30, 1992). This is an administrative judgment on the part of the operator.

32. How many states are working on this issue?

Exact counts are not known. Anecdotal reports indicate most states have similar types of provisions. All of the states bordering Kansas require criminal record checks to some degree. However, each state has different legal coding systems.

33. What if you hire someone who has had a criminal record check in another state? Does that work for Kansas?

NO. Kansas criminal records information would not have been obtained. However, if confirmation of a conviction from another state is obtained, and the offense the individual was convicted of matches an offense which prohibits employment in Kansas, then that individual is prohibited from employment in an adult care home or home health agency.

34. What about facilities on the state borders, does a record check in Missouri work for Kansas?

NO, it does not (due to the reasons cited above). Operators should always make reasonable effort to gather and assimilate record information and references on any prospective employee.

35. Can a facility charge the employee for the cost of the record check?

The law does not address that. Check with your legal counsel or Department of Human Resources.

36. How do you identify a person's race -- you don't have Hispanic or Mexican as choices?

The race categories are in accordance with standards conveyed by the KBI. Accordingly, Hispanic, Spanish or Mexican is considered ethnicity (not race). The person for whom the record check is performed should be identifying his or her own race category.

37. If we already did record checks directly through KBI or another service provider, do we have to repeat all of those we've already paid for?

YES. The intent is to have a single-source for accessing criminal records history information, which the law identifies as KDHE and KBI. Part of the rationale for this requirement is standardization of record information. What may be accessed through county law enforcement or an independent agency does not include juvenile records. Under the current law, select juvenile convictions (history) would result in prohibition of employment.

38. What exactly is the employment date that allows long-term employees to be exempt from the criminal record check requirement?

Those employees who have had continuous employment on or before July 1, 1992 are not subject to the record check requirement.

39. Do we have to check all our employees annually?

NO. There is not an annual requirement. However, if a facility or agency sends in requests on employees annually, KDHE will process the request.

40. Are drug offenses prohibited under the law?

NO. The main prohibitions are those convictions dealing with crimes against persons, sexual crimes, and crimes affecting family relationships.

41. Do we mail the payment to KBI since they are charging for the record checks?

NO. You are only obligated to pay \$10.00 per person directly to KDHE. KDHE will take care of the payment to KBI.

42. Do you have a list of all the offenses which prohibit employment?

YES. There is a grid developed which lists the prohibited offenses and the prohibition status for convictions of those offenses. You may request a copy by contacting this office at (785)296-0446 or they can be obtained at www.kdhe.state.ks.us/hoc. However, operators do not have to sort through that level of detail. When a possible matched record is found, research will be conducted and confirmation of the conviction data and the prohibited conviction will be made by the department staff. This confirmation will be the basis of the response notifying the requesting entity. There is the protection for conditional employment and the protection of liability for employment actions for the operators. KDHE will analyze the report based upon the law; the requestor will not be required to analyze the criminal convictions/prohibitions.

43. Can we go ahead and send in all our licensed nursing staff, even though they are exempt?

NO. This law does not allow KDHE to perform KBI record checks on licensed health care professions. If you wish to pursue this, please contact the licensing board of that profession. (This includes such professions as nurses, social workers, psychologists, physical therapists, speech therapists, audiologists, physicians and the like.)

44. Does this law apply to the hospital long-term care units, or assisted living or residential care facilities?

The way to know what facility must comply with this law is to answer the following questions:

- Is the facility licensed under the Kansas Adult Care Home Act or Kansas Home Health Licensure Law? (Yes = the law applies)
- Is the facility licensed as a Kansas Hospital or Medical Care facility? (No = the law does not apply)

In addition, remember that this is a KANSAS LAW -- it is not part of federal reimbursement programs such as Medicare or Medicaid.

45. We are an Area Agency on Aging and provide some services in the home—do we have to comply with this law?

Refer to question 44. The law pertains to operators of licensed adult care homes and home health agencies. If you have further questions, contact your AAA administrator or the Kansas Department on Aging.

46. What is the legality of asking about juvenile convictions? I have 15-16 year-old kids working in laundry, housekeeping and the kitchen. Do I have the right to send them in?

YES. Not only do you have the right, but it is the law.

47. Can we use our own (or our corporation's) request form?

NO. Use the form prepared and provided by KDHE. Additional forms can be requested by calling (785) 296-0446 or at www.kdhe.state.ks.us/hoc.

48. What if I can't find the right job classification on the form?

Select the category which is the closest fit. If you have suggested classes to be added, please make note in a separate area after you have made a selection. These will be evaluated.

49. Your job classification includes several titles that are filled by volunteers in our facility. Do we have to submit their names, then?

NO. The law describes those who are exempt, including volunteers. It does not specify what the volunteers are doing.

50. How will KDHE determine when a person is no longer prohibited, since the amended law allows someone to work if five years have elapsed since completion of their sentencing, etc.?

If no verification is available through the KBI, the prohibited individual will have to request that the appropriate information be sent to KDHE from the court of jurisdiction or the Department of Corrections. Remember, five years must have elapsed since the completion of all sentencing requirements including parole or probation.

51. What do we do if we have employees who work at several different licensed facilities? Surely we don't have to pay \$10.00 and fill out a form for each facility?

NO. Be certain to identify all facility license numbers on the individual's request form. This assures that the individual has been checked for employment at each place (site).

52. Does the state (KDHE, KBI) check for theft convictions and will facilities have access to that information?

Yes. Information which may be released is specified under the law.

53. Can an individual work after they have had the prohibited offense expunged?

Yes. Once a certified copy of the expungement order is received, reviewed, and approved by KDHE, a letter is issued to the individual's employer declaring the previously issued Notice of Employment Prohibition null and void.

54. Can we get a copy of the form to use now?

You may request a copy of the criminal record check request form or obtain an order form for the prepaid forms by contacting (785)296-0446 or on the KDHE website at www.kdhe.state.ks.us/hoc.
